

**REMARKS****Summary of the Office Action**

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamaguchi et al. (U.S. Patent No. 5,513,201) (hereinafter “Yamaguchi”) in view of Kusuyama (U.S. Pat. Pub. No. 2002/0191296) (hereinafter “Kusuyama”).

Claim 1 stands provisionally rejected under the judicially created doctrine of non statutory obviousness-type double patenting as being unpatentable over claim 1 of co-pending application no. 10/523,634 in view of Kusuyama.

Claims 2-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Summary of the Response to the Office Action**

Applicants have amended claim 2 to rewrite it in independent form in accordance with the Office Action’s indication of allowable subject matter. Accordingly, claim 1 is canceled without prejudice or disclaimer and the dependency of claims 4 and 5 has thus been amended. As a result, claims 2-9 remain currently pending for consideration.

**Rejection under 35 U.S.C. § 103(a)**

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable by Yamaguchi in view of Kusuyama. Applicants have canceled claim 1 without prejudice or disclaimer, rendering this rejection moot. Accordingly, Applicants respectfully request that this rejection be withdrawn.

**Double Patenting Rejection**

Claim 1 stands provisionally rejected under the judicially created doctrine of non statutory obviousness-type double patenting as being unpatentable over claim 1 of co-pending application no. 10/523,634 in view of Kusuyama. It appears that this rejection is in error because application no. 10/523,634 issued as U.S. Patent No. 7,489,447 on February 10, 2009. Regardless, Applicants have canceled claim 1 without prejudice or disclaimer, rendering this rejection moot. Accordingly, Applicants request that the double patenting rejection be withdrawn.

**All Remaining Claims are in Condition for Allowance**

The Examiner is thanked for the indication that claims 2-9, while objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent form. Accordingly, Applicants have amended claim 2 to rewrite it in independent form in accordance with the Office Action's indication of allowable subject matter. Accordingly, claim 1 is canceled without prejudice or disclaimer and the dependency of claims 4 and 5 has thus been amended.

Accordingly, newly-amended independent claim 2 is now in *prima-facie* condition for allowance. Furthermore, Applicants respectfully assert that the dependent claims 3-9 are allowable at least because of their dependence from newly-amended independent claim 2, and the reasons discussed previously. Withdrawal of the objection to dependent claims 2-9 is thus respectfully requested.

**CONCLUSION**

In view of the foregoing, Applicants submit that the pending claims are in condition for allowance, and respectfully request reconsideration and timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response; the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution. A favorable action is awaited.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

**DRINKER BIDDLE & REATH LLP**



Paul A. Fournier  
Reg. No. 41,023

Dated: November 19, 2009

By:

**Customer No. 055694**

**DRINKER BIDDLE & REATH LLP**  
1500 K Street, N.W., Suite 1100  
Washington, DC 20005-1209  
Tel.: (202) 842-8800  
Fax: (202) 842-8465